

**IN THE COURT OF ARVIND KUMAR
SPECIAL JUDGE, CBI-10, ROUSE AVENUE COURTS
NEW DELHI**

**CC No : 02/15
RC NO : 217 2011 A 0004
Branch : CBI/ACU-V/New Delhi
U/S : 120B, 420 IPC
r/w 13(2) r/w 13(1)(d) of P.C. Act, 1988**

CBI

.....Complainant

Versus

- 1. Randhir Singh Thakur
S/O Sh. Sher Singh
Superintending Engineer
R/O 549/02, MES Officers Colony
Nirman Vihar, Military Station
Jaipur** **....Accused no. 1**
- 2. Vinay Kumar Gulati
S/O Late C.P.Gulati
Executive Engineer,
C379, SFS Triveni Apartment
Shekhsarai, Phase-1
New Delhi** **.....Accused no. 2**
- 3. Bal Krishan Das Mundhra
S/O Late Madhav Das Mundhra
Chairman & Managing Director of
M/s simplex Projects Ltd.** **....Accused no. 3**

4. **Raghav Das Mundhra**
S/O Sh. B.K.Mundhra
Director M/s simplex Projects Ltd. Accused no. 4

5. **Sudershan Das Mundhra**
S/O Sh. B.k.Mundhra
Director M/s Simplex Projects Ltd. Accused no. 5

6. **Jai Kishan Bagri**
S/o Sh. Bal Kishan Bagri
Director M/s Simplex Projects Ltd. Accused no. 6

7. **M/s Simplex Projects Ltd.,**Accused No. 7
19, Nellie Sengupta Sarani,
3rd Floor, Kolkata.

ORDER ON CHARGE

Brief facts as per prosecution are as under:-

1. The Executive Engineer (BM-I) {Building Maintenance Division-I}, NDMC invited open tender under two envelop system, for the work of Improvement/Upgradation of Shivaji Stadium SH: Construction of Sports Facility Block, Hockey Stadium warm up pitch, two level basement for parking, including electrical, fire fighting & protection, HVAC, lift etc. complete as a composite work at an estimated cost of Rs. 80.85 crores by publishing tender notice in several news papers on 16.02.2008 and also circulated the tender notice in various divisions of

NDMC as well as of Delhi Government, after having the NIT approved from the Competent Authority, in this case the Chief Engineer (Civil), NDMC. This tender was not a global tender so the condition of NIT did not suit to a foreign contractor. As per the contract condition, Joint Venture (JV) or sub letting was not allowed. The important eligibility criteria and conditions as per the NIT were as under:

- a. Proof of approval/registration with appropriate authority.
- b. Proof of completion of work as per requirement of tender.
- c. Proof of registration under Delhi Value Added Tax (D-VAT) Act, 2004 and undertaking that up-to-date returns submitted to Trade and Taxes Deptt., Delhi.
- g. List of construction plant and equipment, steel shuttering etc.
- h. Structure of the organization including details of technical and administrative personnel to be employed for work.
- i. Earnest Money in the shape of deposit at call/pay order/demand draft of schedule bank in favour of the Secretary, NDMC payable at Delhi/New Delhi.
- j. Bank Solvency certificate of Rs. 24.00 Crores.
- k. List of minimum three approved/registered firms for E & M Works associated with the main bidder, if the main bidder is not registered /approved for E & M works.

2. M/s Simplex Project Ltd. purchased the tender document of the said work on 22.02.2008. But as per tender condition, it was not eligible to pre-qualify in the technical bids as it did not have the required experience of execution of work.

3. The Board of Directors of M/s Simplex Project Ltd. resolved on 22.02.2008, that for the purpose of execution of work of Improvement/Upgradation of Shivaji Stadium, the company would enter into a work-agreement with M/s China Railway Shisiju Group Corporation, a Chinese company and also authorized one of its employees, Sh. Ravi Kant Jayaswal, to sign the agreement on behalf of the company. The main conditions of the work agreement between M/s China Railway Shisiju Group Corporation and M/s Simplex Project Ltd. were as under:

(a) If M/s China Railway Shisiju Group Corporation (CRSSG) is successful bidder and awarded the work by Client, CRSSG shall entrust the entire execution of the said work to M/s Simplex Project Ltd. (SPL) and SPL shall execute, complete and remedy the work in accordance with the provisions of the Contract Agreement, to be entered into between CRSSG and Client, and also as per instructions issued by the Client from time to time in accordance with the said "Contract Agreement". And all the taxes levied on CRSSG and commission, if any, and all other expenses involved or incidental to the Work should be met, paid, borne, and reimbursed by SPL.

(b) In case of award of the Work, CRSSG shall be entitled to a net amount, as Overhead Fees, calculated @ 1.7% (one point seven percent) of the project value including the value on escalation, bonus extra items and other contractual payment. This Overhead shall be exclusive of all types of taxes (including but not limited to Income Tax,

Service Tax, Sales Tax, Work Contract Tax, Labour Cess)/ transaction charges and commission. The taxes, if any, on this Overhead Fees shall be borne/paid/reimbursed by SPL. Any deduction made by Client on account of TDS/Service Tax/Work contract Tax, Labour Cess, Security deposits, Retention money/Interest/other deductions shall not be considered for calculation of Overhead Fees to be paid to CRSSG. CRSSG shall not be responsible for any type of deduction/short payment by Client.

(c) SPL shall employ the required technical and administrative personnel and deploy necessary labour force, materials, machinery and any other resources adequate to complete the work according to the terms and conditions of the Contract Agreement entered into by CRSSG with the Client.

In case SPL needs the technical support from CRSSG during the execution of Project, SPL should give the additional payment to CRSSG. The exact amount will be discussed and agreed mutually.

(d) The project in-charge shall be appointed by SPL but shall take the consent from CRSSG. The project in charge shall be given the power of attorney after the award of the contract to CRSSG.

(e) SPL has agreed to provide the Tender Security, Performance Guarantee, Bank Guarantees against

Machinery and Mobilization advance, Bank Guarantees in lieu of Security Deposit etc., and other guarantees/ bonds/ EMD required by Client in the name of CRSSG. All expenses incurred in obtaining the bank guarantees/ bonds/ EMD including the expenses towards extension of said bank guarantees/ bonds shall be borne by SPL.

(f) SPL should get down the necessary registration and the approval required by the relevant authorities for CRSSG and bear the cost.

(g) SPL shall get done the Sales Tax Assessments, Turnover Tax and Local Tax assessments and other tax formalities for the entire Work and bear the cost and furthermore, submit Tax Clearance Certificate/ Assessment Order to CRSSG.

(h) All the taxes levied by relevant authorities on this Work and on CRSSG's Overhead Fees should be paid/ borne/ reimbursed by SPL.

(i) SPL agrees to indemnify, defend and hold CRSSG harmless from and against any liability, losses, cost, expense, claim, judgment, awards settlement of damage that CRSSG may incur or be required to pay to any third party which is caused by any act of omission or commission in performance of the obligation under this Agreement by SPL or contributed due to breach by SPL of any other terms contained by the contract Agreement and this work

agreement including without limitation, any liability, cost, expense, claim, judgment, award, settlement or damage that CRSSG may incur owing to such act of omission or commission or breach by SPL of any of the terms contained in this Work Agreement.

4. After the resolution of its Board of Directors for the agreement with M/s China Railway Shisiju Group Corporation, M/s Simplex Project Ltd. got purchased a tender document for the said work of NDMC, in the name of M/s China Railway Shisiju Group Corporation on 29.2.2008, through one of its employee Sh. Debasish Mukherjee.

5. The tender documents of this work were sold to eleven companies/contractors, but on opening of tenders on 24.3.2008, tenders of the following six companies were found in the tender box:

1. M/s China Railway Shisuji Group Corpn.
2. M/s Ahluwalia Corporation (India) Ltd.
3. M/s JMC Projects Ltd.
4. M/s Nagarjuna Const. Co.
5. M/s YMC Buildmore
6. M/s Unity India Project Ltd.

6. Accused V K Gulati, on 24.3.2008 itself, proposed the constitution of a sub- committee, consisting of the following persons, to scrutinize the technical bids of all the 6 bidders whose tenders were received, which was approved by Sh. R S Thakur on 24.3.2008 itself:

1. EE (BM-I)

2. EE (BM-II)
3. EE (P-II)
4. Sr. A.O. (W-II)
5. Architectural Consultant, M/s Raja Aederi
Consultant Pvt. Ltd.

7. As per CPWD Works Manual, the technical bids should have been evaluated by the aforementioned sub-committee, but the technical bids were not assigned to the said committee for evaluation. Instead, on 26.3.2008, Accused V K Gulati, EE(BM-I), with the assistance of Sh. B P Verma, AAO, BM(I), NDMC, prepared a comparative statement of technical bids of all the six bidders. In this comparative statement, they have mentioned just 'yes' or 'no' against the eligibility conditions of all the bidders except M/s China Railway Shisiju Group Corporation.

8. As per tender documents submitted by the Chinese Company, it was not eligible for this work on the following grounds:

- (i). It was not registered with any works department in India.
- (ii). The certificates pertaining to its experience were not issued by any works department under Central Govt., State Govt., Municipal Board, Autonomous Bodies or Public Sector Undertaking in India.
- (iii). It was not registered under Delhi Value Added Tax (D-VAT) Act, 2004 or under such Act of any other Govt. in India.
- (iv). It has not enclosed the list of associated approved & registered Electrical & Mechanical (E&M) contractors.
- (v). The Bank Solvency Certificate submitted by the

company was not issued by any Bank operating in India.

9. It was the sub-committee which should have given its recommendation on the eligibility of all the six participating bidders including the chinese company, as per the condition of tender document, but on 26.3.2008 itself, Sh. V K Gulati, the then Executive Engineer, for giving a twist to the matter, recommended for seeking the opinion of Law Department which was forwarded by Sh. R S Thakur, Superintending Engineer/Project Leader.

10. The Law Department, on 02.04.2008, opined that it had to be ensured that the company met each and every condition of NIT. When the file was again marked to Legal Advisor, Head of the Law Department, on 04.04.2008, without informing whether the chinese company, fulfilled each and every conditions of Law Department, the Legal Advisor opined, on 07.04.2008 that "if M/s China Railway Shisiju Group Corporation fulfill the conditions of NIT, they are entitled to participate in the tender. Deptt. has not brought on record that they do not NIT conditions and as such they will qualify". After giving his opinion, the Legal Advisor marked the file to the Chairman, NDMC.

11. Sh. Parimal Rai, the then Chairman, NDMC approved the opinion of Legal Advisor on 08.04.2008 with his comments, " Appears logical" and marked the file to the works department. On 08.04.2008 itself, V K Gulati issued letters to all the six participating bidders regarding opening of their financial bids on 10.04.2008. However, the sub-committee which had been constituted to scrutinize the technical bids, was not handed over the technical bids and it had not given its report on the eligibility of the participating bidders.

12. Accused V.K.Gulati had obtained the signature of all the five members of the said sub-committee on a note pertaining to the meeting of the sub-committee, whereby all the six bidders had been recommended to be qualified for financial bids. When three of them were examined during investigation, they stated that they had signed the said note on 09.04.2008, merely on the assurance of Sh. V K Gulati that he had already got examined the documents and obtained the positive opinion of the law department.

13. The comparative statement of Financial Bids was prepared on 16.04.2008. On the same day, the file was marked to AE(P) for preparation of justification of rates and on the same day, justification of rates was put up by Sh. J K Katyal, AE.

14. The estimated cost of this work/project, at the time of inviting the tender was Rs.80,85,18,605/. However, the quoted rate of the bidder declared as L-1 was Rs.165,13,24,024/. Justification of rates is prepared to examine as to whether the rates quoted by L-1 are acceptable or not. If the quoted rates of L-1 are within 10% above the justification of rates, the rate quoted by L-1 is normally acceptable.

15. When Sh. J K Katyal put up the justification of rates, he considered further rebate @5.5% on the electrical items and therefore, the final quoted rate of L-1 came as 10.64% over the justified cost which is also reflected in the noting of Sh. J K Katyal. During the investigation, Sh. J K Katyal stated that he considered the rebate as per the verbal information of Sh. V K Gulati that L-1 i.e. M/s China Railway Shisiju Group Corporation had offered further rebate on electrical items @

5.5%. He stated that he did not see the offer letter.

16. The justification put up by Sh. J K Katyal was marked to Head Draftsman (BM-I) by Sh. V K Gulati, EE (BM-I) for checking on 16.4.2008 itself. Head Draftsman (BM-I) Sh. R P Singh, after checking the justification of rates, marked the file back to EE (BM-I). In his note, Sh. R P Singh mentioned the tendered cost of M/s China Railway Shisiju Group Corporation as Rs.1651324024/-, which was later on corrected to Rs.1602716430/-, and percentage of tender cost over justified cost, initially mentioned as 11.5%, was later on corrected to 9.39%. Whereas in the abstract of justification, Sh. R P Singh has taken the percentage of tender cost over justified cost as 14.88%. He has considered the rebate as already taken in the abstract but after correcting the figure of estimated cost as taken in the abstract, he considered the justified cost as Rs. 142242678/- which is the over all calculation. During his examination, he stated that he did not go into the papers relating to offer of rebate but he merely checked the arithmetical calculation and on that basis he changed the final calculation. On being shown his notings, he stated that the correction in figures in his noting is not in his writing. He could not identify the writing in which the correction has been made. None else has identified this overwriting. This shows that until the justification was checked by Head Draftsman Sh. R P Singh, the abstract showed that the tendered cost of L-1 was 11.5% above the justified cost which was not acceptable in normal course.

17. Sh. V K Gulati, EE(BM-I), after receiving the justification of rates as checked by Head Draftsman, put up a note wherein he mentioned that justification had been prepared based on current market rates and tendered cost was 9.39 percent above the justified cost which

was well within the prescribed limit of 10% as per provisions of Section 19.4.3.2 of CPWD Manual 2007. This included the rebate of 5.5% on the electrical items, given by the firm voluntarily vide their letter dated 16.4.2012. Investigation has disclosed that there was no letter for a rebate of 5.5% on the electrical items. It was merely conveyed verbally by Sh. V K Gulati to Sh. J K Katyal.

18. Thus, the rebate offer of L-1, after opening of financial bids and preparation of justification of rates, accepted by Sh. V K Gulati without the approval of the competent authority, put a question mark on the transparency of the tendering process. At different stage of scrutiny of justification, he informed different rates of rebate without providing the concerned officer the actual letter of the contractor pertaining to rebate.

19. When the file was referred to Finance Department on 24.04.2008, the Financial Advisor, Sh. Manish Kumar, after getting the file examined by his sub-ordinates, raised several objections including the objection regarding the eligibility of L-1 M/s China Railway Shisiju Group Corporation, about the comparative statement of technical bids and about the rebate of 5.5% on 16.04.2008 offered by L-1 after opening of financial bids.

20. The Works Department marked the file to Finance Department for their concurrence on 24.4.2008 and on the same day, notice was issued for the meeting of Empowered Committee to be held on 25.4.2008 to: 1). Secretary, NDMC, 2). Financial Advisor (F.A.); 3). Legal Advisor (L.A.); 4). Chief Architect (C.A.); 5). Chief Engineer (Civil) [C.E. (C.)]; 6). Director (Project); 7). Superintending Engineer (Planning/ Estimate) [SE(PE)] Civil/Project Leader; 8). Superintending Engineer

(Planning) [SE(P)]- Electrical; 9). Staff Officer to Chairman; 10). PS to Chairman; and 11). M/s. Raja Aederi Consultant Pvt. Ltd.

21. The Empowered Committee was constituted vide office order no. D-348/PA/Dir(GA)/05 dated 26-12-2005 under the signature of the then Director, Co-ordination Smt. Indu Shekhar Mishra, with the approval of the then Chairperson, NDMC. The Empowered Committee was constituted in order to streamline the procedure of conceptualizing, planning and execution of Fast Track Projects (FTP) of NDMC notified by office order no. ONLINE/PA/DIR(P) dated 21.10.2005 and all such projects which are declared as Fast Track Projects by the competent authority from time to time. The investigation has revealed that Empowered Committee was a committee merely to streamline the things and co-ordinate amongst the different departments responsible for the execution of project, through the departmental Heads. Constitution of Empowered Committee was merely an administrative decision for the smooth execution of projects in view of the Commonwealth Games-2010 to be held in Delhi.

22. Since as per the constitution of Empowered Committee, Secretary, NDMC is the Member-convener of Empowered Committee, he should issue the notice for the meeting of Empowered Committee and prepare the minutes of meeting but the investigation has revealed that the meeting notice of Empowered Committee was practically issued by the department concerned whose matter was to be discussed in meeting and minutes of the meeting was prepared by the department but it was not signed by all the members of Empowered Committee as is laid down in its constitution order.

23. No minutes of the meeting of Empowered Committee held on 25.4.2008 has been found. There is a notice dated 24.4.2008 issued by Sh. V K Gulati, EE (BM-I) for the meeting of Empowered Committee to be held on 25.4.2008. There is an agenda on record for Empowered Committee for this work. There is a noting of Sh. Manish Kumar, FA wherein he has referred to the meeting of Empowered Committee held on 25.4.2008 and there is reference of resolution of Empowered Committee in the agenda for the Council's Meeting on 28.4.2008. Apart from the references of the meeting of Empowered Committee in the said documents, no other documents has been found during the investigation which could expressly reveal about the discussion or deliberations that transpired in the meeting of Empowered Committee which agreed with the view points of the Works Department regarding the eligibility of L-1, technical comparative statement and the rebate offered by L-1 after opening of Financial Bids.

24. Documents reveal that on 25.4.2008, Finance Advisor gave his observation on the tender documents and justification, whereby he raised his objections on the eligibility of L-1, scrutiny of tender documents and also on the rebate offered by L-1. On 25.4.2008 itself, Works Department gave their clarification, which is vague. On 25.4.2008 itself, meeting of Empowered Committee was held as referred in the subsequent note of Finance Advisor which is again given on 25.4.2008.

25. It was a normal practice that after clearance of a file by the Finance Department, the file was put up before the Empowered Committee and after the resolution of the Empowered Committee, the file was put up before the council of NDMC. After the resolution of Empowered Committee, the file was not sent back to the Finance

Department. But in this case, after the resolution of the Empowered Committee, the file was again sent back to Finance Department by the works Department i.e. by Sh. V K Gulati through Sh. R. S.Thakur.

26. Thus from the resolution of Empowered Committee, as incorporated in the agenda for the Council's meeting, it is obvious that there is no reference of the objection of the Finance Department on the eligibility of L-1, scrutiny of technical bids or rebate offer of L1 after opening of financial bids. Thus it establish the facts that the eligibility of L-1 was in question, technical bids were not properly compared and offer of rebate given by L-1 after opening of financial bids was accepted by Sh. V K Gulati at his own level, were not brought to the notice of the members of council of NDMC vide the said agenda. In the agenda, entire history of the project, every procedure and comments have been narrated and incorporated but the objections of Finance Department over the eligibility of L-1, scrutiny of technical bids and rebate offer of L-1 after opening of financial bids and explanation offered by the works department to those objections have not been referred to. It is also not referred in the agenda for the meeting of the council that a sub-committee was formed to scrutinize the technical bids of all the bidders as per the express provision of CPWD Works Manual 2007 and as per the evaluation of the said sub-committee, financial bids of only those bidders would have been opened who would have qualified in the technical bids for their eligibility. This agenda is perused and approved by the then Chairman, NDMC, Sh. Parimal Rai.

27. In the resolution bearing No. 29(A-19) dated 28.04.2008, whereby the council of NDMC approved to award the work of Imp./upgradation of Shivaji Stadium, the recommendation of project

leader is incorporated as under:-

“To award the above work to M/s China Railway Shisiju Group Corporation at their tendered amount of Rs. 1602716430/- which is 98.23% above the estimated cost of Rs.80.85 crore and the variation between the tendered cost and justified cost is 9.39% above, being a competitive bidding.”

28. The Council's Resolution regarding the award of tender to M/s China Railway Shisiju Group Corporation is as under:

"Resolved by the Council to award the work to M/s China Railway Shisiju Group Corporation at tendered amount of Rs.1602716430/- which is 98.23% above the Estimated Cost of Rs.80.85 crores and the variation between the tendered cost and justified cost is 9.39% (above), being a competitive bidding."

29. Thus it is established that Sh. V.K.Gulati deliberately opened the financial bids of ineligible contractors, which was also recommended by Sh. R.S.Thakur and despite this fact having been brought on record by Finance Department, Sh. Parimal Rai, Chairman, NDMC, hid this fact from the council and got the work awarded to M/s China Railway Shisiju Group Corporation.

30. As per clause 2.1 of the NIT conditions, the contractors registered in other organization shall also have to get themselves

registered in NDMC before they are paid first running bill. As M/s China Railway Shisiju Group Corporation was awarded the work of Imp./upgradation of Shivaji Stadium, an agreement no. 5/EE(BM-I)/AB/2008-09 dated 09.06.2008 in this regard was signed between NDMC and M/s China Railway Shisiju Group Corporation. As per the contract condition M/s China Railway Shisiju Group Corporation applied for their enlistment as contractor in NDMC vide their application no. crsgc/c-238/08-09/02 dated 04.09.2008.

31. Mr. Vikas Bhasin, Dealing Assistant, put up a note whereby he submitted that before submitting the case to the higher authority, the performance report (experience certificate) and banker certificate may be confirmed. As the banker certificate and experience certificate submitted by M/s China Railway Shisiju Group Corporation was from China, therefore, Senior AO, Sh. G K Chopra put up a note that as the firm has submitted the list of works which have been executed in China and the bank solvency certificate is also from China, so the documents submitted by the firm may be got vetted through law department before its registration could be done. Legal Advisor Sh. V C Chaturvedi observed that it was not possible for law department to certify or vet the documents submitted by a Foreign Firm. Now, Senior AO put up a note dated 27.01.2009 whereby it was proposed that since the contractor has deposited the required fee of registration, submitted the banks solvency and already been awarded the work pertaining to Commonwealth Games 2010 of Rs. 160 crore, we may consider the registration of the firm in view of the observation of the law department that they can not vet the documents submitted by a foreign firm. But the Chief Engineer did not take any decision on this note of Sr. A O.

32. Under the pressure of Sh. R S Thakur, Sr. A.O. again put up a note dated 02.02.2009 to the effect that the firm may be provisionally enlisted because the same has been awarded the work on the basis of the same documents submitted by them during tendering and on which the Legal Advisor had given his opinion.

33. The members of sub-committee for enlistment of contractors i.e. Sh. R S Thakur, the then Additional CE(C) approved this recommendation of Senior AO Sh. G K Chopra.

34. Thus, from the facts related to the enlistment of M/s China Railway Shisiju Group Corporation in NDMC as per the tender condition, it is established that Sh. R S Thakur here again tried to cover up the ineligibility of M/s China Railway Shisiju Group Corporation by giving provisional enlistment to the contractor against the rules of enlistment.

35. Sh. V K Gulati, in the capacity of Executive Engineer and Sh. R S Thakur, in the capacity of Superintending Engineer & Project Leader, had played a vital role in drafting of the tender conditions of the instant work. They should have out rightly recommended for not considering M/s China Railway Shisiju Group Corporation. But they unnecessarily sought for the opinion of Law Department. Sh. Parimal Rai, instead of taking a decision or giving a direction to the works department, put an ambiguous remarks on the opinion of Legal Advisor. Sh. V K Gulati without taking the proper approval of the competent authority, issued letters to all the bidders for attending the financial bids of all of them and accordingly, financial bids of all the six bidders were opened on 10.04.2008. Sh. V K Gulati did not hand over the bid documents to the sub-committee constituted for evaluation of technical

bids, instead, he got their signatures on the notes prepared by himself on 09.04.2008, by misleading them that he had sought the opinion of Law Department. When the finance department gave an unequivocal comment on the ineligibility of the chinese company, Sh. V K Gulati and Sh. R S Thakur gave a circumventing explanation to the observations made by finance department to justify the eligibility of M/s China Railway Shisiju Group Corporation. Though Sh. Parimal Rai was aware of the fact that the eligibility of the Chinese company was in question since the time of examining of technical bids, yet he did not take any decision to settle the issue once and for all. Instead, he sided with Sh. V K Gulati and Sh. R S Thakur and let them to misrepresent the facts about the eligibility of the Chinese company. Thus these facts establish that Sh. V K Gulati, Sh. R S Thakur and Sh. Parimal Rai colluded with each other and also with the officials (including Director) of M/s China Railway Shisiju Group Corporation and M/s Simplex Projects Ltd. and abused their respective official positions in order to cause illegal gain to M/s Simplex Projects Ltd. by awarding the work to an ineligible Chinese company namely M/s China Railway Shisiju Group Corporation.

36. It is further alleged that the entire work was subletted to M/s Simplex Project Ltd. in violation of tender condition. M/s China Railway Shisiju Group Corporation had neither executed any work independently in India nor did it have any project office in India till the opening of bids for Imp./upgradation of Shivaji Stadium, NDMC on 24.3.2008. As per the Guidelines of RBI, a company of China required permission of RBI to open any project office in India. The company opened a project office in India, that too without the required permission of RBI, and after submitting the tender for this work.

37. M/s Simplex Project Ltd. had also purchased the tender documents for the work of Imp./upgradation of Shivaji Stadium vide their application No. SPL/SD001 dated 22.2.2008 under the signature of Sh. Rajeev Kapur, the then employee of M/s Simplex Project Ltd. Sh. Rajeev Kapoor received the tender documents of the work on the same day under his acknowledgment.

38. After the Board of Directors of M/s Simplex Project Ltd. passed the resolution to enter into an agreement with M/s China Railway Shisiju Group Corporation for the purpose of execution of work of improvement/upgradation of Shivaji Stadium, if awarded by Ex. Engineer (BM-I), Civil Engineering, NDMC, M/s Simplex Project Ltd. got purchased a tender document for the work of Imp./upgradation of Shivaji Stadium in the name of M/s China Railway Shisiju Group Corporation on 29.2.2008 through Sh. Debasish Mukharjee, an employee of M/s Simplex Project Ltd. Sh. Mukherjee stated that as per the direction of Sh. Sudershan Mundhra, Director of M/s Simplex Projects Ltd., he met Sh. V.K.Gulati, the then Ex. Engineer (BM-I), NDMC and received the tender documents.

39. In furtherance of the resolution of the Board of Directors of M/s Simplex Project Ltd. on 22.2.2008, whereby the proposal of its CMD to enter into agreement with M/s China Railway Shisiju Group Corporation was ratified and Sh. Ravi Kant Jayaswal was authorized to sign the agreement on behalf of the company with M/s China Railway Shisiju Group Corporation, Sh. Ravi Kant Jayaswal signed the agreement with M/s China Railway Shisiju Group Corporation dated 17th March, 2008.

40. M/s Simplex Project Ltd. has got issued the Bank Draft of Rs.20 Lakhs and Bank Guarantee of Rs.71 Lakhs in favour of NDMC on behalf of M/s China Railway Shisiju Group Corporation.

41. In the meeting of Board of Directors of M/s Simplex Project Ltd. dated 17.03.2008, the CMD of the company Sh. Balkrishan Das Mundhra informed that at their request, Development Credit Bank Ltd., Premlata, 39, Shakespeare Sarani, Kolkata had agreed to issue Bank Guarantee for Rs. 71 lakhs on behalf of M/s China Railway Shisiju Group Corporation in favour of NDMC. He suggested to give a Counter Guarantee for an equivalent amount which be executed by the Company in favour of the Bank to indemnify the Bank of any obligation/loss or damage arising out of such issuance of Guarantee by the Bank. All such proposal were ratified the Board of Directors in this meeting.

42. Development Credit Bank (DCB) issued Bank Guarantee No. INBG07908000030 dated 22.03.2008 for Rs. 71 lakhs in favour of New Delhi Municipal Council on behalf of M/s. China Railway Shisiju Group Corporation, on the application dated 19.03.2008 under the signature of Mr. J.K. Bagri, Director of M/s. Simplex Project Ltd. In the application, it was mentioned that they have entered into a work agreement with M/s. China Railway Shisiju Group Corporation whereby M/s China Railway Shisiju Group Corporation had agreed to sublet the entire work of improvement/upgradation of Shivaji Stadium, in case they were successful in getting award of the contract. It was also mentioned in the application that as per the contract entered with M/s. China Railway Shisiju Group Corporation, they would be executing the whole project on back to back basis and hence, the obligation of providing the earnest money deposit for the job lay on them.

43. UCO Bank, New Market Branch, Kolkata issued Demand Draft for Rs.20 lakhs in favour of Secretary, NDMC, New Delhi against the application dated 20.3.2008 of M/s Simplex Project Ltd. The said demand draft was issued against a cheque No.097707 dated 20.3.2008 for Rs.20,03,500/- from the account of M/s Simplex Project Ltd. which was enclosed with the said draft application form. This Demand Draft was part of the earnest money of the tender documents in the name of M/s China Railway Shisiju Group Corporation.

44. The rates in the tender documents of M/s China Railway Shisiju Group Corporation for the work of Imp./upgradation of Shivaji Stadium were filled in by M/s Simplex Project Ltd. During the investigation, Sh. Rajeev Kapoor, the then employee of M/s Simplex Project Ltd., has identified his writings in the tender documents of M/s China Shisiju Group Corporation. Sh. Rajeev Kapoor stated that as per the direction of Sh. Sudershan Mundhra, he filled in the rates of different items of Bill of Quantity of the tender in the name of M/s China Railway Shisiju Group Corporation on the basis of similar computerized documents.

45. Sh. Asit Chatterje, an employee of M/s Simplex Project Ltd., has signed on behalf of M/s China Railway Shisiju Group Corporation in the Tender Opening Register wherein the item wise rates of all the bidders for the tender of Imp./upgradation of Shivaji Stadium were noted down.

46. Bank Guarantee No. 017GM01081770002 dated 25.6.2008 for Rs.8,01,35,822/- in favour of New Delhi Municipal Council on behalf

of M/s. China Railway Shisiju Group Corporation and the extension of said Bank Guarantee dated 19.11.2009 and 30.11.2010 were issued by Yes Bank Ltd., 19, Camac Street, Kolkata upon the counter indemnity given by Sh. Balkrishan Das Mundra on behalf of M/s Simplex Project Ltd. against the facility of Rs.30 crores provided by the Bank to M/s Simplex Project Ltd.

47. Bank Guarantee No. 003GM01082310005 dated 18.08.2008 for Rs. 8,01,35822 in favour of New Delhi Municipal Council on behalf of M/s. China Railway Shisiju Group Corporation and the extension of said Bank Guarantee dated 19.11.2009 and 25.11.2010 were issued by Yes Bank Ltd., 19, Camac Street, Kolkata on the applications of M/s Simplex Project Ltd. upon the counter indemnity given by Sh. Balkrishan Das Mundhra on behalf of M/s Simplex Project Ltd. against the facility of Rs.30 crores provided by the Bank to M/s Simplex Project Ltd. In the counter indemnity under the signature of Sh. Balkrishan Das Mundhra, CMD of M/s Simplex Project Ltd. given to Yes Bank Ltd. for issue of above mentioned Bank Guarantees, it is categorically stated that pursuant to a contract award letter dated 29.4.2008 awarded by NDMC to M/s China Railway Shisiju Group Corporation for upgradation of Shivji Stadium SH: Construction of Sports Facility Block, Hockey Stadium warm up pitch, two level basement for parking, including electrical, fire fighting & protection, HVAC, lift etc. complete as a composite work, they have entered into a sub-contract agreement with the company dated 18.3.2008 for the entire project on back to back basis.

48. While confirming the Bank Guarantee No. 003GM01082310005, on the request of Executive. Engineer (BM-I), Yes Bank, Chanakayapuri Branch informed Executive Engineer (BM-I) that

the Bank Guarantee No. 003GM01082310005 was issued on 18.8.2008 and would expire on 23.11.2009 and the Bank Guarantee was issued on the application of M/s Simplex Projects Ltd. This confirmation letter nowhere mentions the main contractor's name i.e. M/s China Railway Shisiju Group Corporation. This confirmation letter bears the initial of Sh. V K Gulati for marking the same to AAO of his division. This fact establishes that from the very beginning, Sh. V K Gulati was in the knowledge that M/s China Railway Shisiju Group Corporation had participated in the tender on behalf of M/s Simplex Projects Ltd.

49. M/s Simplex Project Ltd. has got the insurance of stores at Talkatora and Shivaji Stadium against burglary. Copy of this insurance cover note is in the correspondence file of NDMC pertaining to Imp./upgradation of Shivaji Stadium work.

50. All the material required for the execution of work of Imp./upgradation of Shivaji Stadium have been purchased in the name of M/s Simplex Project Ltd. by M/s Simplex Project Ltd. and all the payments have been made by M/s Simplex Project Ltd. only.

51. M/s Simplex Project Ltd. has made all the agreements with the sub-contractor meant for specialized work required at site like electrical work, HVAC and lifts.

52. M/s Amber Electritech Ltd. executed the electrical work on the basis of letter of intent of M/s Simplex Project Ltd. and upon the verbal agreement with Sh. Sudharshan Mundhra, Director of M/s Simplex Project Ltd., at Shivaji Stadium and they also received payments directly from M/s Simplex Project Ltd.

53. M/s Johnson Lifts Pvt. Ltd. has installed lifts at Shivaji Stadium under the agreement entered into with M/s Simplex Project Ltd. and they have received payment from M/s Simplex Project Ltd. only.

54. M/s Unique Engineering Pvt. Ltd. has executed the work of HVAC at Shivaji Stadium under the agreement with M/s Simplex Project Ltd. and they received payments from M/s Simplex Project Ltd. only.

55. M/s Integrity Projects & Technologies (I) Pvt. Ltd. has also executed the electrical works at Shivaji Stadium under the agreement with M/s Simplex Project Ltd.

56. M/s China Railway Shisiju Group Corporation had filed application u/s 36A(2) of DVAT Act, 2004 for issuing certificate for non-deduction of TDS because they had claimed that they had sublet the entire work for execution to M/s Simplex Project Ltd. In support of their claim, they had submitted a work agreement executed between them on 14.3.2012. As per the said agreement, M/s China Railway Shisiju Group Corporation shall be entitled to a net amount, as Overhead Fees calculated @ 1.7% of the project value including the value on escalation, bonus extra items and other contractual payment. This overhead shall be exclusive of all types of taxes (including but not limited to Income Tax, Service Tax, Sales Tax, Work Contract Tax, Labour Cess)/ transaction charges and commission. As per their claim, DVAT issued certificate of no deduction of TDS in favour of M/s China Railway Shisiju Group Corporation.

57. The officer of DVAT Department, Sh. V S Tomar, the then

value added tax officer (VATO) and Sh. Virender Singh, the then Assistant Value Added Tax Officer (AVATO) conducted audit of business affairs of M/s China Railway Shisiju Group Corporation on 16.6.2010 and reported that M/s China Railway Shisiju Group Corporation had not made any purchase from any one for the execution of the project of Shivaji Stadium. They also recorded the statement of Sh. Zhao Jiashu, the then Director of M/s China Railway Shisiju Group Corporation in India wherein he stated that his company had entrusted the whole of the contract, i.e. the entire work to sub-contractor M/s Simplex Project Ltd. on back to back basis.

58. M/s China Railway Shisiju Group Corporation filed an application to the income tax officer TDC ward, International Taxation, New Delhi under the signature of Sh. Zhao Jiashu for certificate for lower rate of taxation under section 197 of the Income Tax Act, 1961 wherein he submitted that his company had entered into sub-contract with M/s Simplex Project Ltd. on back to back basis. He also submitted that the company would retain the margin on the total billing to NDMC @ 1.7% so the company would have to pay to the sub-contractor 98.3% of the total billing as sub-contract charges.

59. The books of accounts of M/s China Railway Shisiju Group Corporation establish that M/s China Railway Shisiju Group Corporation had done nothing for the execution of work at Shivaji Stadium.

60. Sh. R K Meena, Asstt. Labour Commissioner (Central) and Ms. Arti Batra, the then Labour Enforcement Officer (Central), New Delhi conducted the inspection of Shivaji Stadium on 24.09.2010 under Contract Labour (Regulation & Abolition) Act, 1970 and Building and

other Construction Worker (RE & CS) Act, 1996. In their inspection, they came to know that M/s Simplex Project Ltd. was the sub-contractor of M/s China Railway Shisiju Group Corporation. This fact was brought forth by the labourers who were working there at that time. On the basis of this finding, they issued Show Cause Notice to M/s China Railway Shisiju Group Corporation and also to M/s Simplex Project Ltd.

61. Sh. G. Bachani or Sh. Asit Chatterji or Sh. Rakesh Agnihotri or Sh. Rajiv Kapoor, who were shown to be working as employees of M/s China Railway Shisiju Group Corporation, all of them were the employees of M/s Simplex Project Ltd. and they all have got their salaries/remuneration from M/s Simplex Project Ltd.

62. The above facts related to the subletting of work of Imp./upgradation of Shivaji Stadium establish that this is not merely a case of subletting, rather it is a case where an ineligible contractor i.e. M/s Simplex Project Ltd. made an agreement with a foreign company i.e. M/s China Railway Shisiju Group Corporation of China to lend their name for bidding in the tender of Imp./upgradation of Shivaji Stadium and in lieu, the Indian Company agreed to pay 1.7% of the tender cost to the foreign company in addition to bear all cost of execution and managing everything in their name. Though it was in the knowledge of Sh. V K Gulati, Executive Engineer, Sh. R S Thakur the Superintending Engineer/Project Leader and also Sh. Parimal Rai that it was M/s Simplex Projects Ltd., who was actually Executing the work but none of them initiated any action against the company which was actually awarded the work. Instead, all of them tried their level best to hide this facts.

63. Role of accused Sh. V K Gulati, the then Executive Engineer, Building Maintenance Division-I/ Stadia Project, NDMC;

i. Being Executive Engineer of BM-I Division, he had been well aware of the eligibility criteria for the bidders for the work of improvement/upgradation of Shivaji Stadium. Yet he sought for the opinion of law department on the eligibility of M/s China Railway Shisiju Group Corporation knowing fully well that the company was not eligible as per tender condition.

ii. He had himself recommended for constitution of sub-committee for evaluation of technical bids of the six participating bidders. Yet he did not hand over the technical bids of the six participating bidders to the members of the said sub-committee for evaluation. Instead, he got their signature on a note prepared by himself to the effect that all the bidders qualify the eligibility criteria, by misleading them that he had already sought the opinion of law department.

iii. Being the Executive Engineer he must have known that for opening the financial bids, approval of the competent authority was required. In this case, the competent authority to approve the opening of financial bids was the Chairman of NDMC. Yet he did not seek the formal approval of Sh. Parimal Rai, the then Chairman of NDMC and issued letters to all the six bidders for attending the opening of financial bids on 10.04.2008 without resolving the issue of eligibility of the Chinese Company.

iv. Being the Executive Engineer, he provided false quotations to his subordinate JEs' and AEs' for preparation of justification of rates on an inflated rate of certain items so that the justified rates could reach closer to the quoted rate of the Chinese Company declared as L-1.

v. Sh. V K Gulati accepted the further rebate offered by M/s China Railway Shisiju Group Corporation after opening of financial bids just to make the offer of the company within the acceptable limit after the preparation of justification of rates. He did not get approval of any senior authority for accepting such offer after opening of the financial bids and thereby shattered the whole process of transparency in the tendering.

vi. While preparing the comparative statement of technical bids, he intently did not compare the list of approved and registered E&M contractors associated with the main bidders only because the Chinese Company had not enclosed such list as per the requirement of NIT conditions.

vii Even when the finance department had categorically highlighted the ineligibility of the Chinese company, he circumvented the explanation for the eligibility of the said company and did not explain as to how the said company was eligible as per the tender conditions.

viii. It was Sh. V K Gulati who had issued the notice for the meeting of Empowered Committee to all the members of

Empowered Committee. If at all the meeting of Empowered Committee was held and the eligibility of Chinese Company was discussed in this meeting and it was resolved by the committee that the company was eligible, he should have got the resolution signed by all its members. But he chose not to take the resolution of the Empowered Committee on record.

ix If the Empowered Committee had overridden the opinion of Finance Department, he should not have sent back the file to Finance Department.

x. He did not incorporate the comments of Finance Department whereby the eligibility of the Chinese Company was questioned, so that he could mislead the council of NDMC which was the final authority to approve the award of contract for this work. He reflected the resolution of Empowered Committee in agenda for the council, wherein the eligibility of Chinese Company was nowhere discussed.

xi. Being Executive Engineer of both Talkatora Stadium and Shivaji Stadium, he was well aware that M/s Simplex Projects Ltd. had been executing the work of Talkatora Stadium. He had been in contact with the officials including the director of M/s Simplex Projects Ltd. who were engaged in execution of work at Talkatora Stadium. Yet he closed his eyes and allowed them to attend the meeting conducted in respect of taking stock of the progress of work at Shivaji Stadium.

xii. It was Sh. V K Gulati who had allowed the bill of M/s

China Railway Shisiju Group Corporation against the purchase of Steel in the name of M/s Simplex Projects Ltd.

64. Role of accused Sh. R S Thakur, the then Superintending Engineer/Project Leader, NDMC:

i. Being Superintending Engineer/Project Leader, NDMC, he had been well aware of the eligibility criteria for the bidders for the work of improvement/upgradation of Shivaji Stadium. Yet he recommended the proposal of Sh. V K Gulati for seeking the opinion of law department on the eligibility of M/s China Railway Shisiju Group Corporation knowing fully well that the company was not eligible as per tender condition.

ii. He had himself approved the constitution of sub-committee for evaluation of technical bids of the six participating bidders. Yet he did not ensure that the evaluation from the said sub-committee on the technical bids of the bidders was obtained before opening of the financial bids.

iii. Being the Superintending Engineer/Project Leader, he must have been known that for opening the financial bids, approval of the competent authority was required. In this case the competent authority to approve the opening of financial bids was the Chairman of NDMC. Yet, he chose to agree with the decision of Sh. V K Gulati to open the financial bids without the approval of the competent authority.

iv. He did not cross check the comparative statement of technical bids prepared by Sh. V K Gulati and simply forwarded it to senior authorities without ensuring that the technical bids had been properly evaluated.

v. Being the Superintending Engineer/Project Leader, he had to cross check the justification of rates prepared by the works division and to examine the admissibility of the rebate-offer of L-1 after opening of financial bids. Yet he did not check the justification of rates and the rebate-offer of L-1 and simply forwarded the recommendations of Sh. V K Gulati.

vi. Even when the finance department had categorically highlighted the ineligibility of the Chinese company, he chose to side with Sh. V K Gulati in circumventing the explanation for the eligibility of the said company and did not explain as to how the said company was eligible as per the tender conditions.

vii. If at all the meeting of Empowered Committee was held and the eligibility of Chinese Company was discussed in this meeting and it was resolved by the committee that the company was eligible, he should have ensured that the resolution of the Empowered Committee is prepared and got signed by all its attending members. But he chose to connive with Sh. V K Gulati in not taking the resolution of the Empowered Committee on record.

viii. If the Empowered Committee had overridden the opinion

of Finance Department, he should not have recommended the proposal of Sh. V K Gulati to send back the file to Finance Department.

ix. He did not ensure to incorporate the comments of Finance Department whereby the eligibility of the Chinese Company was questioned, so that he could mislead the council of NDMC which was the final authority to approve the award of contract for this work. He recommended the draft of Sh. V K Gulati in reflecting the resolution of Empowered Committee in agenda for the council, wherein the eligibility of Chinese Company was nowhere discussed.

x. Being Superintending Engineer/Project Leader of both Talkatora Stadium and Shivaji Stadium, he was well aware that M/s Simplex Projects Ltd. had been executing the work of Talkatora Stadium. He had been in contact with the officials including the director of M/s Simplex Projects Ltd. who were engaged in execution of work at Talkatora Stadium. Yet he also closed his eyes and allowed them to attend the meeting conducted in respect of taking stock of the progress of work at Shivaji Stadium.

65. The prosecution filed chargesheet alleging that:

i) Sh. V K Gulati, the then Ex. Engineer (BM-I)/Stadia Project, NDMC; Sh. R S Thakur, the then SE/Project Leader, NDMC and Sh. Parimal Rai, the then Chairman, NDMC have committed offence u/s 120-B r/w 420 IPC and 13 (2) r/w 13(1)

(d) of P C Act, 1988 and substantive offences u/s 13 (2) r/w 13(1)(d) of P C Act, 1988;

ii) Sh. Zhao Jiashu, Sh. B K Mundhra, Sh. R D Mundhra, Sh. S D Mundhra and Sh. J K Bagri have committed offence u/s 120-B r/w 420 IPC and 13 (2) r/w 13 (1) (d) of P.C. Act and substantive offence u/s 420 IPC.

iii) M/s China Railway Shisiju Group Corporation and M/s Simplex Project Ltd. (Hereinafter referred as M/s SPL) has committed offence u/s 120-B r/w 420 IPC and substantive offences thereof, through their Directors/representative.

66. V K Gulati, the then Ex. Engineer. Engineer (BM-I)/Stadia Project, NDMC has retired from service, therefore, sanction u/s 19 of P C Act, 1988 for his prosecution is not required.

67. Sanction u/s 19 of P C Act, 1988 for prosecution of Sh. Parimal Rai, IAS, the then Chairman, NDMC was sought, but the competent authority has declined to grant sanction to prosecute Parimal Rai.

68. Sanction u/s 19 of P C Act, 1988 for prosecution against R .S. Thakur, the then SE/Project Leader, NDMC has been obtained from the Competent Authority vide letter No. 304/D(Vig.II)/2013 dated 09.12.2013 of Ministry of Defence Govt. of India.

69. Zhao Jiashu, the Director of M/s China Railway Shisiju

Group Corporation and M/s China Railway Shisiju Group Corporation could not be served and vide order dt. 17.08.2019, the trial of abovesaid two accused was separated from the trial of the other accused persons.

70. I have heard counsel for the parties.

CONTENTIONS OF COUNSEL FOR CBI

71. Ld. Counsel for CBI contended that M/s China Railway Shisiju Group Corporation was not eligible but was awarded the work of improvement and up-gradation of Shivaji Stadium with the active connivance of accused no. 1, R.S.Thakur, Superintending Engineer and accused no 2, V.K.Gulati, Executive Engineer. It is submitted that M/s China Railway Shisiju Group Corporation did not fulfil the eligibility criteria as laid down in NIT, such as registration under DVAT Act, 2004, providing list of minimum three approved /registered firm for E & M Works associated with the main bidder if the main bidder is not registered/approved for E & M Works, registration with appropriate authority, proof of completion of work as per requirement of tender, solvency certificate from bank etc. but despite that accused persons hatched conspiracy and in furtherance of the said conspiracy, work was awarded to the aforesaid company.

72. It is further contended by Ld. Counsel for CBI that the tender was awarded to the ineligible contractor i.e. M/s China Railway Shisiju Group Corporation while infact the entire work was to be done by M/s Simplex Project Limited, accused no. 7 which was also not eligible to apply for tender. It is submitted that in fact M/s SPL grabbed the project in the name of M/s China Railway Shisiju Group Corporation. It is

submitted that entire work was done by M/s SPL although it was awarded to M/s China Railway Shisiju Group Corporation and the said Chinese company charged 1.7 % of total contract amount from M/s SPL and thereby deceiving the government and depriving the eligible contractor to get the work. It is also submitted that sub-letting of entire work by contractor was not permissible as it would make eligibility conditions redundant.

73. It is also submitted that accused no. 1, R.S.Thakur and accused no 2, V.k.Gulati were aware that M/s China Railway Shisiju Group Corporation was not eligible but they deliberately committed number of omissions and commissions to favour M/s China Railway Shisiju Group Corporation to grant tender in its favour. It is submitted that both the aforesaid accused accepted the rebate in the estimate/bid amount, after after opening of the financial bid, which was illegal and against the settled policy.

74. It is further submitted that accused no. 1 and 2 were also aware, that in fact entire work would be done by M/s SPL, which company was not eligible even to apply. It is further submitted that M/s SPL had admittedly purchased the tender documents but did not apply, as it did not fulfil the basic conditions of eligibility, however, the said company got contract in the name of M/s China Railway Shisiju Group Corporation which was also not eligible and the accused no. 1 and 2 despite knowing this fact tried to cover-up/hide the fact regarding eligibility of the said company and facilitated grant of contract to the said company. It is submitted that there was deep rooted conspiracy amongst all these accused persons, hence, charges are liable to be framed against these accused persons.

75. Ld. Counsel for the CBI relied upon judgments (1) K.Satwant Singh Vs. State of Punjab, 1960 Cr.L.J.410 SC (2) State of Himachal Pradesh Vs. M.P.Gupta, AIR 2004 SC 730 (3) Chaudhary Praveen Sultana Vs. State of West Bengal, 2009 Cr.L.J. 1318 SC (4) Keshav Madhav Menon Vs. State of Bombay, AIR 1951 SC 128.

CONTENTIONS OF COUNSEL FOR ACCUSED NO. 1

76. Ld. Counsel for accused no. 1 submitted that accused no. 1 has not committed any offence, as alleged by CBI and he has taken due care and caution that contract is awarded to eligible contractor and also ensured that work may be completed in time because of the upcoming Commonwealth Games. It is submitted that there was no malafide on the part of accused no. 1 and the matter regarding eligibility of M/s China Railway Shisiju Group Corporation was discussed with the higher authorities and was also referred to Legal Department. The contract was awarded only when Empowered Committee and NDMC Council satisfied themselves and found everything in order. It is submitted that all the points were discussed in the meeting of the Empowered Committee. Ld. Counsel for accused no. 1 also submitted that M/s China Railway Shisiju Group Corporation was competent and eligible to apply and was registered with ROC, Haryana and was already conducting project in Andhra Pradesh and there was no condition in the NIT that only Indian companies can apply and further the accused no. 1 has no role in framing terms and conditions of NIT. It is submitted that said company was eligible to apply for the said tender and was

fulfilling all the conditions of NIT. Ld. Counsel for accused no. 1 contended that word 'India' was not written in NIT, hence, foreign companies could also apply for tender.

77. Ld. Counsel for accused no. 1 further contended that registration of Company with Trade & Taxes Department, Delhi was not mandatory at the time of bidding as the successful bidder was to get himself registered with Trade & Taxes Department, Delhi before any payment was made to agency. It is also submitted that as per eligibility criteria of NIT, the list of associated approved and registered electrical and mechanical contractor was not mandatory at the time of filing of bid. Further as per eligibility criteria, bidder was required to submit solvency certificate from bank but it was not mandatory that bidder should submit solvency certificate issued by any bank in India. It is also submitted that objections of Finance Department were marked by him to accused no. 2 who has given detailed reply and these objections were discussed by Empowered Committee in its meeting held on 24.04.2008 and the Council also endorsed the view that M/s China Railway Shisiju was eligible for bidding.

78. It is also submitted that Chief Engineer was the Competent Authority to grant approval for provisional enlistment of M/s China Railway Shisiju Group Corporation to the NDMC and he has merely forwarded the recommendation of G.K.Chopra, Senior Account Officer.

79. It is further submitted that on 21.03.2011, accused no. 1 was relieved from NDMC and as per his knowledge, M/s China Railway Shisiju Group Corporation was to complete the work and he was not aware that the project would be completed by M/s SPL. It is also

submitted that had there been malafide on the part of accused persons, M/s China Railway Shisiju Group Corporation and M/s SPL would not have executed agreement between them.

80. Ld. Counsel for accused no. 1 submitted that no loss has been caused to the Government nor accused no. 1 had gained any pecuniary benefit in the said contract and the work was upto mark and was done without any delay and thus no case is made out against accused no. 1. It is also submitted that whatever the accused has done, was done in the public interest. It is also submitted that accused no. 1 recommended the name of M/s China Railway Shisiju Group Corporation after finding that said company fulfilled the conditions as laid down in NIT.

CONTENTIONS OF COUNSEL FOR ACCUSED NO. 2

81. It is submitted that all the acts being attributed to the accused No. 2 in the present case by the CBI were done by him in the course of his official duties and since there is no sanction under section 197 of Cr.P.C to prosecute the accused No. 2 who is a retired Public servant, the present proceedings ought to be dropped against the accused no. 2. It is further submitted that even if it is assumed that accused No. 2 had exceeded his powers or duty while carrying out his official functions, the same would not mean that the accused no. 2 has committed a criminal offence. If such an act has a reasonable connection with the official duties of the Accused, then the same would not fall within the ambit of a criminal Offence and sanction under Section 197 Cr.P.C. would be required. It is submitted that the accused No. 2 has acted with complete transparency and

impartiality and has infact made all his notings on the department file and the said note sheets have been duly forwarded to all the concerned higher officials in the department. It is submitted that if the accused no. 2 had any malafide intentions or wanted to commit an illegal act, he would not have made noting on the official files which were perused by all the senior officials. All the notings of accused NO. 2 were put up before senior officials in routine manner and such acts of making noting and putting up the same before other senior officials are all connected with his official duty.

82. Ld. Counsel for accused no. 2 submits that accused no. 2 did not get M/s China Railway Shisuju Group Corporation qualified rather asked for vetting of documents by legal department and only on Legal Department giving positive opinion, the matter was placed before the higher authorities, i.e. the Empowered Committee, the Council and the Chairman of NDMC, and they approved the grant of tender to the said company, therefore there has not been any wrong on the part of the accused no. 2. Ld. Counsel for accused no. 2 submits that in comparative statement he did not write that M/s China Railway Shisiju Group Corporation is qualified and he only forwarded the same without giving any comments.

83. It is further submitted by Ld. Counsel for accused no. 2 that Legal Department has given its approval and the Chairman has also commented that approval is logical, therefore, it cannot be said that accused no. 2 had any malafide intention. It is further submitted that accused no. 2 has followed all the procedure and sent letters to all the six bidders for financial bid. Ld. Counsel for accused no. 2 has also submitted that the alleged acts of the accused no. 2 can be irregularities

but cannot be termed as an illegalities. It is also submitted that no loss has been caused to the NDMC nor the accused got any pecuniary advantage.

It is also submitted that work done was upto the mark and there has not been any delay in the work, therefore no case is made out against the accused no. 2.

84. Ld. Counsel for accused relied upon following judgments **(1)** Centre for Public Interest Litigation Vs. Union of India, 2005 (8) SCC 202 **(2)** C.K.Jaffer Sharief Vs. State, 2013 (1) SCC 205 **(3)** P.S.Murthy Vs. State Manu/TN/1261/2010 **(4)** R. Balakrishna Pillai Vs. State of Kerela, 1996 (1) SCC 478 **(5)** M.G.Sekar Vs. State, 2015 SCC Online Madras 6606 **(6)** D.T.Virupakshapa Vs. C. Subhash, 2015 (12) SCC 231 **(7)** Laxminaraya Vs. State, Manu/AP/0303/2017 **(8)** State Vs. Mukesh Kumar Singh, 2018 SCC online Del 8136 **(9)** Dwarika Prasad Bahuguna Vs. State, 1996 JCC 396 **(10)** Anjani Kumar Vs. State of Bihar, 2008 (5) SCC 248 **(11)** Mahavir Vs. State, 2019 (1) SCC 329 **(12)** Om Prakash & Ors. Vs. State of Jharkhand, 2012 (12) SCC 72 **(13)** Nanjappa Vs. State, AIR 2015 SC 3060 **(14)** P.Vijayan Vs. State of Kerela & Anrs., AIR 2010 SC 63 **(15)** Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, 2008 CrI.L.J. 3872 **(16)** Dilawar Balu Kurane Vs. State of Maharashtra, (2002) 2 SCC 135 **(17)** Niranjani Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijjaya & Ors, (1990) 4 SCC 76 **(18)** A. SivaPrakash Vs. State of Kerela, 2016 (12) SCC 273 **(19)** C. Chenga Reddy & Ors. Vs. State of Andhra Pradesh , 1996 (10) SCC 193 **(20)** State of Madhya Pradesh Vs. Sheetla Sahai, 2009 (8) SCC 617 **(21)** Rakesh Kumar Vs. State 83(2000) DLT 30 **(22)** State Vs. Madan Lal Khurana and Ors.,82 (1999) DLT 951 **(23)** Sahibe Alam Vs. State 98(2002) DLT 167 **(24)** D. Devaraja Vs. Owais Sabeer Hussain, CrI. Appeal No. 458/2020

CONTENTIONS OF COUNSEL FOR ACCUSED NO. 3 TO 7

85. Ld. Counsel for accused no. 3 to 7 contended that there has been no fraudulent or dishonest act on the part of accused persons and

no monetary loss has been caused to NDMC or to anyone, therefore, offence of cheating is not made out. It is further submitted that no undue advantage like pecuniary or in any other form has been taken by the accused.

86. It is further submitted that allegation of CBI that accused persons have grabbed the work, is without any basis and far from truth. It is submitted that M/s SPL had worked as an agent for M/s China Railway Shisiju Group Corporation, which is permitted as per Clause 18 of the NIT Documents. It is submitted that M/s SPL was introduced to facilitate the execution of work in accordance with the terms of the NIT.

87. It is submitted that purchase of NIT documents by M/s SPL employee does not constitute any offence. It is submitted that M/s SPL and its Directors has nothing to do with the eligibility/ineligibility of M/s China Railway Shisiju Group Corporation as the same was the matter between NDMC and the said company and M/s SPL had only performed the work as an agent of M/s China Railway Shisiju Group Corporation and thus no offence is made out against the aforesaid accused. It is submitted that there is nothing on record to show that there was any conspiracy on the part of accused no. 3 to 7 and thus the aforesaid accused persons are liable to be discharged.

It is also contended by the counsel for accused no 4 to 7 that that there is no allegation against the accused no. 4 and hence accused no. 4 is liable to be discharged.

88. Ld. Counsel for accused persons relied upon following judgments **(1)** Samir Sahay @ Sameer Sahay Vs. State of UP , AIR

2017 SC 5327 **(2)** S.W.Palanitkar & Ors. Vs. State of Bihar & Anr, 2002
1 SCC 241 **(3)** Union of India Vs. Prafulla Kumar Samal & Anr., 1979 3
SCC 4. (4) Shreya Jha Vs. CBI, 2007 (3) JCC 2318 (High Court) **(5)**
Sanjeev Kumar Vs. State of Himachal Pradesh, AIR 1999 SC 782 **(6)**
Umang Saxena Vs. State of NCT (Delhi), 2006 (3) JCC 1911 **(7)**
Sarbars Singh & anr Vs. State of NCT Delhi, 116 (2005) DLT 698 **(8)**
Union of India Vs. Prafulla Kumar Samal (supra) **(9)** A.K.Jain & Ors.
Vs. State, 124 (2005) DLT 16 **(10)** Bhagwanti Vs. State, 94 (2001) DLT
632 **(11)** R.Natarajan & Ors. Vs. State, 126 (2006) DLT 403 **(12)**
Sandeep Vats Vs. State **(13)** Bheem Singh Vs. State, 48 (1992) DLT
402 (HC) **(14)** L.K.Advani & Ors. Vs. CBI, 66 (1997) DLT 618 **(15)**
Samir Sahar @ Sameer Sahay Vs. State of UP, AIR 2017 5327 (SC)
(16) Kanshi Ram Vs. State 86 (2000) DLT 609.

89. I have gone through the material on record.

90. At the outset, I may state that it is settled law that at the stage of framing of charge the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for conviction of the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed.

91. In **2000 SCC (Cri.) 981 State of Tamil Nadu Vs. J. Jayalalitha**, it was held by Hon'ble apex court that :-

“This is not the stage for weighing the pros and cons of all the implications of the materials nor for sifting the materials presented by the prosecution. The exercise at this stage should be confined to considering the police report and the documents to decide whether the allegations against the accused are “groundless” or whether “there is

ground for presuming that the accused has committed the offences.” Presumption therein is always rebuttable by the accused for which there must be opportunity of participation in the trial.”

92. In **2001 Cri. L. J. 1723, Smt. Om Wati and another vs. State, through Delhi Admn. and others Hon,ble S.C. observed :-**

“8. At the stage of passing the order in terms of S. 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the Court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of S. 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then the then along the Court can discharge the accused. The Court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. This Court in *Stree Atyachar Virodhi Prishad v. Dilip Nathumal Chordi* (1989) 1 SCC 715 cautioned the High Courts to be loathe in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the Court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point, as there are Courts but that would not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial to proceed”.

9. Dealing with the scope of Ss. 227 and 228 of the Code and the limitations imposed upon the Court at

the initial stage of framing the charge, the Hon'ble Apex Court in State of Bihar v. Ramesh Singh, (1977 Cri.LJ 1606) held as under :

“Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under S. 227 or S. 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence, if any, cannot show that the accused

committed the offence, there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S. 227 or S. 228, then in such a situation ordinarily and generally the order which will have to be made will be one under S. 228 and not under S. 227.”

10. A three-Judge Bench of Apex Court in *Supdt. and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja* (1979 Cri LJ 1390), reminded the Courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The Court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of a strong suspicion founded on materials before it, the Court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them.”

93. In the case of **Kanti Bhadra Shaha Vs. State of West Bengal (2000) 1 SCC 722**, the Supreme Court has even gone to the extent of holding that there is no legal requirement that the trial court

should write an order showing the reasons for framing a charge. It is quite unnecessary to write a detailed order if the proceedings do not culminate. This was considered to be a measure to avert all roadblocks causing avoidable delays.

94. Reference may also be made to the case of **State Vs. S Bangarappa 2001 CriL.J. Page 111**, where the Apex Court emphasized the need to have the limited exercise during the state of framing charge. The court held that :-

“Time and again this Court has pointed out that at the stage of framing charge the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further. (vide State of M.P. Vs. Dr. Krishna Chandra Saksena, (1996) 11 SCC 439).”

95. In nutshell role of the accused persons is that accused no. 1 and accused no. 2 conspired with the other accused and got the tender of renovation/improvement of Shivaji stadium awarded in favour of M/s China Railways Shisuju Group Corporation while the said company did not fulfill the eligibility criteria as per the NIT. Further the said company has subletted the entire awarded work to M/s Simplex Projects Limited in violation of the terms and conditions of NIT and the project was executed by M/s SPL which fact was within the knowledge of accused no. 1 and 2. M/s S PL was not eligible to apply for the tender as it did not

had requisite experience, however its officials conspired with other accused, used the name of M/s China Railway Shisiju Group Corporation to get the said contract and thus all the accused cheated the NDMC by getting the contract awarded in favour of an ineligible company by misrepresenting the facts and thus causing loss to the NDMC. Accused No. 1 and 2 abused their official position to grant undue favour to M/s SPL and its directors and to M/s China Railway Shisiju Group Corporation and its director.

96. Here it is relevant to state that to constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. Criminal conspiracy is an independent offence in the Penal code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express or partly implied. Even Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators.

97. First contention of Ld. Counsel for accused no. 1 is that M/s China Railway Shisiju Group Corporation was eligible to apply for tender. It is not disputed that M/s China Railway Shisiju Group Corporation was not registered with any Works Department in India, it was not having experience certificate from any works department under Central government, State Government, Municipal Body etc in India. It was not registered under DVAT Act, 2004 and has not enclosed list of approved and registered Electrical & Mechanical Contractor at the time of filing bid nor submitted solvency certificate from any bank in India.

98. Perusal of different conditions of NIT makes it clear that tender in question was not a global tender and conditions regarding registration with appropriate authority cannot be construed as registration with some authority outside India. The experience certificate also cannot be expected from any municipal/autonomous body situated outside India as the same could not have been verified. Further the registration under DVAT Act, 2004 and filing of upto date returns means company should have been registered under DVAT Act, 2004 at the time of filing tender. The solvency certificate from bank outside India was not acceptable as the same would defeat the very purpose of taking certificate as it could not have been verified.

99. Further the list of approved/registered firms for E & M Work associated with the main bidder was also the condition required to be fulfilled. These were pre-conditions and there is nothing on record to show that any relaxation was granted by NDMC in respect of the aforesaid conditions. Prosecution witness Sh. Anant Kumar, Chief Engineer, NDMC has clarified that "proof of approval/registration with appropriate authority mean registration of contractor with works

department like CPWD , MCD etc. He also clarified that solvency certificate by bank situated outside India could not be accepted. Another prosecution witness Sh. Dev Raj, Executive Engineer clarified that a foreign contractor having no experience of work in India, cannot be permitted to participate in tendering process as it would be difficult to verify the work experience. Thus, the contention of counsel for accused no. 1 that 'India' was not written in NIT, hence, all the conditions mentioned in NIT were applicable globally and making it a global tender, is gross misinterpretation of the NIT conditions.

100. It is noted that accused no. 1, who was project leader recommended the name of M/s China Railway Shisiju Group Corporation for award of contract while he was required to reject the name of M/s China Railway Shisiju Group Corporation in view of its not fulfilling the NIT conditions.

101. Further the banker's certificate of solvency and another certificate regarding requisite experience were issued from China and the legal advisor advised that it was not possible to verify the said certificate, as has been issued from China but accused no. 1 and accused no. 2 ignored the advice given by legal advisor.

102. As per Prosecution accused no. 1, R.S.Thakur, asked Sr. AO, Mr. G.K.Chopra to put a note dated 02.02.2009 that accused firm M/s China Railway Shisiju Group Corporation may be provisionally enlisted although the said co. did not provide the list of E&M contractors associated with it and thus accused No. 1 tried to cover up the ineligibility of M/s China Railway Shisiju Group Corporation. It is also

noted that Finance Department has raised objections regarding eligibility of the said Chinese Company but accused no. 1 and accused no. 2 gave circumventing explanation to the observation made by Finance Department in order to justify the eligibility of M/s China Railway Shisiju Group Corporation.

103. Another contention of Ld. Counsel for accused no. 1 is that chief engineer was competent to take various decisions and accused no. 1 was not competent to take decisions in the aforesaid matters. PW G.P. Sharma, Chief Engineer (Retd.) has stated that accused no. 1 was the Project Leader and was Incharge of project and he was decision making authority in Works Department regarding execution of project, hence, to say that accused no. 1 was not competent to take decision is far from truth.

104. Ld. Counsel for the accused no. 1 also contended that accused no. 1 was not aware as to who was executing the work. It is apparent from the statement of PW, Y.K.Sabharbal, Executive Engineer and material on record that accused no. 1, R.S.Thakur was aware that the work was being executed by M/s SPL in the present tender. Accused no. 1 was also looking after work being done by M/s SPL in Talkatora Stadium. Accused No. 1 was knowing Sudershan Dass Mundhra, director of M/s SPL. Accused no. 1, R.S.Thakur and accused no. 2, V.K.Gulati were well aware that entire work was being executed by M/s SPL as both the accused had visited the site of work on various occasions and accused no.1 as well as accused no. 2 were in contact with the officials/Director of M/s SPL who were engaged in execution of work of Talkatora Stadium. Even otherwise it cannot be believed that the Project Leader was not aware as to who was actually

performing/executing the work.

105. Bare perusal of the work agreement dt. 17.3.2008 between M/s SPL and M/s China Railway Shisiju Group Corporation shows that entire work was sub-letted to accused M/s SPL by M/s China Railway Shisiju Group Corporation and the aforesaid companies defrauded the Government in connivance with accused no. 1 and 2. In fact the aforesaid companies misled the Government that work would be done by M/s China Railway Shisiju Group Corporation while in fact it was M/s SPL who completed the entire work.

106. Ld. Counsel for accused no. 2 contended that accused no 2 has followed all the procedure and no wrong has been committed by him. It is noted that accused no. 2, V.K.Gulati was aware that M/s China Railway Shisiju Group Corporation was not eligible but despite that sought opinion of Law Department. A Sub-Committee was constituted for scrutini of technical bids but accsed no.2 did not hand over the technical bids to Sub-Committee. As per prosecution, he got the signatures of members of sub committee on a note prepared by him that all the bidders qualify the eligibility criteria after misleading the members of the sub committee that he had already sought opinion from Law Department. Accused no. 2, V.K.Gulati had even issued letters to all six Bidders for opening of financial bids without approval from the competent authority. The accused no 2 did not consider the objections raised by Finance Department regarding eligibility of M/s China Railway Shisiju Group Corporation and gave evasive reply.

107. Accused no. 2, V.K.Gulati accepted further rebate offered by M/s China Railway Shisiju Group Corporation after opening the financial

bids to make the offer of M/s China Railway Shisiju Group Corporation within acceptable limit after justification of rates and thus totally ignored the transparency in such procedure adopted for grant of work. Thus the contention of counsel for accused no. 2 that he did not commit any wrong and has worked in a transparent manner is without any substance.

108. The objections of financial department regarding eligibility of M/s China Railway Shisiju Group Corporation and rebate accepted by accused no. 2 after opening of financial bid was not put up before empowered committee. The accused no. 2 caused misrepresentation in order to get M/s China Railway Shisiju Group Corporation qualified and obtain tender.

109. Another contention of Ld. Counsel for accused No. 2 is that the alleged act has been done by the accused no. 2 in discharge of his official duty as public servant and sanction U/S 197 CrPC is required before his prosecution.

110. Here it is relevant to mention some of the relevant judgements. In *Matajog Dobey Vs. H.C.Bhari (AIR 1956 SC 44)* it is held:-

“The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty..... there must be a reasonable connection between the act and the discharge of official duty; the act must bear, such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”

111. In B.Saha & Ors. Vs. M.S.Kochar, 1979 (4) SCC 177, it was held by Apex Court :-

“Para 17 that “The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197 (1) of the code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for it is no part of an official duty to commit an offence, and never can be.' In the wider sense, the these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonable connected with his official duty will require sanction for prosecution and the said provision.”

112. Further Apex Court in another case titled as P.Arul Swami Vs. State of Madras, AIR 1967 SC 766 held that :-

“The protection is limited only when the act done by public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing an objectionable act.

113. The Apex Court in Harihar Prasad Vs. State of Bihar, (1972) 3

SCC 89 (SCC p.115.para 66):

“As far as the offence of criminal conspiracy punishable under Section 120B read with Section 409 of Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar”.

114. The aforesaid view has been reiterated by the Apex Court in State of Himachal Pradesh Vs. M.P.Gupta (2004) 2 SCC 349, wherein it has been pointed out that offence under Section 467, 468 and 471 relating to forgery of valuable security, documents, respectively cannot be a part of the duty of a public servant while discharging his official duties. Therefore, want of sanction under Section 197 of the Code may not be a bar for prosecution of such public servant.

115. Recently, Apex Court in case titled “Rajib Ranjan & Ors. Vs. R.Vijay Kumar, Criminal Appeal No. 729-732/2010 dated 14.10.2014, 2015 V AD (SC) 354” held that even while discharging officials duties if a public servant enters into criminal conspiracy or indulges criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duties, the relevant paras are reproduced as under:-

“11.The sanction, however, is necessary if the offence alleged against public servant is committed by him "while acting or purporting to act in the discharge of his official duties". In order to find out as to whether the alleged offence is committed while acting or purporting to act in the discharge of his official duty, following yardstick is provided by this Court in Dr. Budhikota Subbarao (supra) in the following words: "If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.”

12. This principle was explained in some more detail in the case of **Raghunath Anam Govilkar v. State of Maharashtra**, which was decided by this Court on **08.02.2008 in SLP (Crl.) No.5453 of 2007**, in the following manner:-

"On the question of the applicability of Section 197 of the Code of Criminal Procedure. the principle hid down in two cases, namely, **Shreekantiah Ramayya Munipalli Vs. State of Bombay and Amrik Singh v. State of Pepsu** was as follows:

It is not every offence committed, by a public servant that requires sanction for prosecution under Section

197 11) of Criminal Procedure Cod; nor even every act done by him while he is actually engaged in the performance of his official duties: but if the complained of is directly concerned with his official duties so that. If questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary.

The real question therefore, is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Sections 120-B read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties. to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar.”

13. Likewise, in **Shambhoo Nath Misra v. State of U.P. and others, (1997) 5 SCC 326**, the Court dealt with the subject in the following manner:

"5. The question is when the public **servant is**

alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial Court on the question of sanction is clearly illegal and cannot be sustained.”

14. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted”.

116. Apex court in the case of **Centre of Public Interest Litigation vs. UOI, 2005 (8) SCC 202** wherein it has been held that:

'The "safe and sure test' is to find if the omission or neglect of commit the act complained of would have made the public servant answerable for charge of dereliction of his official duty. He may have acted "in excess of his duty", but if there is a "reasonable connection" between the impugned act and the performance of his official duty, the protective umbrella of section 197 Cr.P.C cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts.'

117. Further Hon'ble High Delhi High Court in the judgment "State Vs. Mukesh Kumar Singh & Anr., CrI.Rev.P. 462/2017" observed:-

"The "safe and sure test", as laid down in the case of Centre for Public Interest Litigation (supra), is to find if the omission or neglect to commit the act complained of would have made the public servant answerable for charge of dereliction of his official duty. He may have acted "in excess of his duty", but if there is a "reasonable connection" between the impugned act and the performance of the official duty, the protective umbrella of Section 197 CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts."

118. Thus, as regard the requirement of sanction U/S 197 CrPC for taking cognizance of offences under IPC against Accused No. 2 is concerned, it is clear that the alleged acts committed by accused no. 2 cannot be said to have been done by him in discharge of his official duty or in the purported discharge of his official duty. The said office

merely provided him an opportunity to commit such an act of misdemeanor. The act of entering into criminal conspiracy to cheat or that of committing cheating cannot be deemed to have been done in discharge of his official duty. Hence, the provision of Section 197 CrPC are not attracted in the given circumstances.

119. Hon'ble Supreme Court in the judgment "Satwant Singh Vs. State of Punjab", 1960 Cr.L.J.410 has held that offence of cheating by its very nature cannot be regarded as having been committed by public servant while acting or purporting to act in discharge of official duty.

120. Further Hon'ble SC in "Inspector of Police and Ors. Vs, Battenapalta Venkataratnam and anr.," CrI. Appeal No. 129/2013, while referring its judgement in Rajib Ranjan and oths. Vs R. Vijay kumar, has observed that alleged indulgence of the officials in cheating, fabrication of record or misrepresentation cannot be said to be in discharge of official duty. Both the aforesaid judgements are squarely apply to the facts of the present case. The judgements cited by counsel for accused do not help their case.

121. There has been serious omission and commission on the part of accused no. 2 and they cannot be said to be mere irregularities.

122. Now I turn to the contentions of counsel for accused no. 3 to 7 that accused no.7 was appointed as agent and worked as such, hence no illegality is there on the part of the accused no. 3 to 7. It is noted that as per Clause 18 of NIT, an agent can be appointed and there is no illegality in appointing a company as agent by the contractor for

execution of work in accordance with the contract, however, in the present case M/s SPL has not worked merely as an agent of M/s China Railway Shisiju Group Corporation but in fact the said company has subletted the entire work to M/s SPL, which mean that indirectly the tender has been awarded to M/s SPL. It is clear from the agreement dt. 17.3.2008 between M/s China Railway Shisiju Group Corporation and M/s SPL that M/s China Railway Shisiju Group Corporation has charged 1.7% of the total value of contract as commission and all the formalities and work related to the awarded work, was done by M/s SPL.

123. Here it needs to be mentioned that M/s SPL had purchased the tender documents on 22.2.2008 but it did not had requisite experience of execution of work and on 22.2.2008 Board of directors of M/s SPL resolved that for the purpose execution of work of Improvement/upgradation of Shivaji Stadium, the company would enter into an work agreement with M/s China Railway Shisiju Group Corporation and also authorised one of its employee namely Ravi Kant Jayaswal to sign the agreement on behalf of the company. Debashish Mukherjee, an employee of M/s SPL purchased tender documents in the name of M/s China Railway Shisiju Group Corporation on 29.2.2008. It is noted that even the bank guarantee was given by M/s SPL in the name of M/s China Railway Shisiju Group Corporation and further all the acts for execution of work were done by M/s SPL which clearly shows that M/s SPL did not work merely as agent of M/s China Railway Shisiju Group Corporation. When the entire facts are seen together then the real transaction and motives of accused becomes apparent and the conspiracy becomes crystal clear. The facts cannot be seen in piecemeal

124. The picture, as emerged after going through the material on record is that the contract was in fact given to M/s SPL although name of M/s China Railway Shisiju Group Corporation was used as M/s SPL was not fulfilling criteria as laid down in NIT. Further M/s China Railway Shisiju Group Corporation was also not fulfilling number of criterias laid down in NIT. Thus it is clear that accused no. 1 and 2 conspired with accused no. 3 to 7 and M/s China Railway Shisiju Group Corporation and its director Jhao Jiasu and abused their official positions to cause illegal gain to the aforesaid both companies.

125. So far as the contention of Ld. Counsel for accused that no loss has been caused to any one nor any pecuniary advantage has been gained by aforesaid accused persons, is concerned, Hon'ble Supreme Court in judgment of " Dr.Vimla Vs.Delhi Administration,1963 (2)Cr.LJ434 has observed that if there is gain then there is corresponding loss and the prosecution need not establish loss, if it had succeeded in proving that accused has gained benefit. Here it is seen that accused no. 3 to 7 has indirectly got the work in the name of M/s China Railway Shisiju Group Corporation despite M/s SPL and M/s China Railway Shisiju Group corporation being not eligible,by misrepresenting and concealment of relevant facts and thus gained benefit.

126. Here it is also relevant to mention that accused no. 4 Raghav Dass Mundhra was one of the director of M/s SPL. PW Binaya Dass, Company Secretary of M/s SPL has stated that Raghav Dass Mundhra, accused no. 4, Bal Krishan Mundhra, accused no. 3 and Sudershan Dass Mundhra, Accused no. 5 were the promoter directors of the company and J.K.Bagri, accused no. 6 was the employee and director of

the company and they all were whole time directors and were looking after the day to day work of the company. He further stated that meeting dated 17.3.08 was attended by accused no. 4, Raghav Dass Mundhra and in this meeting B.K.Mundhra had informed that Development Credit Bank Limited has agreed to issue bank guarantee for Rs. 71 lakhs on behalf of M/s China Railway Shisiju Group Corporation and it was resolved by the board that a counter guarantee for an equivalent amount be executed by the company in favour of the bank to indemnify the bank of any obligation/loss arising out of such issuance of guarantee by the Bank. These facts clearly shows that accused no. 4 actively participated in the affairs of the said company and has played active role in the aforesaid illegal acts.

127. The accused No 2 has filed an application under section 227 Cr.P.C. for discharge of accused No. 2 on the aforesaid grounds. In view of the above discussion, application filed by accused no. 2 is dismissed.

128. The aforesaid facts and circumstances of the case thus gives rise to grave suspicion against accused persons warranting framing of charge for the offences as discussed below:-

129. From the facts and circumstances it is clear that accused no. 1, 2,3,4,5,6 and 7 are prima facie guilty of offences under Section 120-B r/w 420 IPC and 13 (2) r/w 13(1)(d) of P C Act, 1988

130. Accused no. 1 and accused no. 2 are prima facie guilty of offences under Section 13(1)(d) r/w Section 13(2) of P C Act.

131. Accused no. 3 to 7 are prima facie guilty of offence under Section 420 IPC.

**(Announced through
Cisco Webex on
20.8.2020)**

**(Arvind Kumar)
Special Judge, CBI-10
Rouse Avenue Courts
New Delhi**

CC No : 02/15
RC NO : 217 2011 A 0004
Branch : CBI/ACU-V/New Delhi
U/S : 120B, 420 IPC
r/w 13(2) r/w 13(1)(d) of P.C. Act, 1988
CBI Vs. Randhir Singh Thakur and others

20.08.2020

Matter is taken up today and the proceedings are conducted through Video Conferencing (CISCO WEBEX) as per directions of Hon'ble High Court issued vide Circular No.322/RG/DHC/2020 dated 15.08.2020 in view of the pandemic Covid-19.

Present: Sh. Naveen Giri, Ld. PP for CBI.
Sh. Puneet Gaba, Ld. Counsel for accused no. 1, R.S.Thakur.
Sh. Anindya Malhotra and Sh. Shaurya Lamba, Ld. Counsels for accused no. 2, V.K.Gulati with V.K.Gulati.
Accused no. 3, Balkrishan Das Mundhra and accused no. 5, Sudershan Das Mundhra are present through video conferencing.
Sh. S.D.Singh, Ld. Counsel for accused no. 3 to 7
Accused no. 7 is company M/s Simplex Project Ltd is represented by accused no. 5 Sh. Sudershan Das Mundhra.

Vide separate order it is held that charges for the offences under Section 120-B r/w 420 IPC and 13 (2) r/w 13(1)(d) of P C Act, 1988 are made out against accused no. 1, R.S.Thakur, accused no. 2, V.K.Gulati, accused no. 3, Bal Krishan Das Mundhra, accused no. 4, Raghav Das Mundhra, accused no. 5, Sudershan Das Mundhra, accused no. 6, Jai Kishan Bagri and accused no. 7, M/s Simplex

Das

Projects Ltd..

Charges for the offences under Section 13(1)(d) r/w Section 13(2) of P C Act are made out against accused no. 1, R.S.Thakur and accused no. 2, V.K.Gulati.

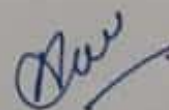
Charges for the offence under Section 420 IPC is made out against accused no. 3, Bal Krishan Das Mundhra, accused no. 4, Raghav Das Mundhra, accused no. 5, Sudershan Das Mundhra, accused no. 6, Jai Kishan Bagri and accused no. 7, M/s Simplex Projects Ltd..

Vide aforesaid order the application filed by accused no. 2, under section 227 Cr.P.C. for discharge is also dismissed.

Put up on 21.09.2020 for framing of charges.

Signed copy of this order is being sent through whatsapp to Ahlmad of this Court with direction to send the same to concerned official of District Court, RADC for uploading on official website of Delhi District Court.

The signed hard copy of the order shall be placed on record as and when the regular functioning of the Courts at Rouse Avenue Complex, New Delhi is resumed.



(Arvind Kumar)
Special Judge CBI-10
Rouse Avenue Courts
New Delhi/20.08.2020

CC No : 01/2015
ECIR : DLZO/15/2014/AD(VM)
U/S : 3 and 4 of PMLA Act
Directorate of Enforcement Vs. Gautam Khaitan & Ors.

20.08.2020

Matter is taken up today and the proceedings are conducted through Video Conferencing (CISCO WEBEX) as per directions of Hon'ble High Court issued vide Circular No.322/RG/DHC/2020 dated 15.08.2020 in view of the pandemic Covid-19

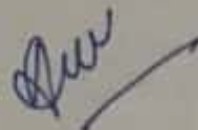
Present: Sh. N.K.Matta and Mohd. Faraz, Ld. SPPs for ED.
Rajiv Saxena in person.
Sh. Rajat Manchanda. Ld. Counsel for
Rajiv Saxena.

Ld. Counsel for Rajiv Saxena submits that name of Rajiv Saxena may be deleted from the array of accused as he has become approver.

On the other hand, Ld. Counsel for ED submits that Rajiv Saxena has not been examined and his name may not be deleted from the array of parties till the time he is examined as witness.

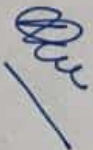
Arguments heard.

Put up on 15.09.2020 for order.

A handwritten signature in blue ink, followed by a long arrow pointing to the right.

Signed copy of this order is being sent through whatsapp to Ahlmad of this Court with direction to send the same to concerned official of District Court, RADDC for uploading on official website of Delhi District Court.

The signed hard copy of the order shall be placed on record as and when the regular functioning of the Courts at Rouse Avenue Complex, New Delhi is resumed.



(Arvind Kumar)
Special Judge (PC Act), CBI-10
Rouse Avenue Court
New Delhi/20.08.2020

CBI Vs. Dhan Laxmi

20.08.2020

Matter is taken up today and the proceedings are conducted through Video Conferencing (CISCO WEBEX) as per directions of Hon'ble High Court issued vide Circular No.322/RG/DHC/2020 dated 15.08.2020 in view of the pandemic Covid-19.

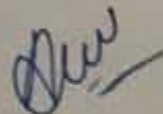
Present: Sh. Navin Kumar Giri, Ld. PP for CBI.
Sh. Gurpreet Singh, Ld. Counsel for accused
Dhan Laxmi.

Ld. Counsel for CBI submits that he has filed soft copy of the English translation of the documents at the email ID of the court, however, he will be providing copies of these documents to Ld. Counsel for accused after he was provided with the email ID of Ld. Counsel for accused.

Ld. Counsel for accused submits that he will be providing his email ID to Ld. PP during the course of day.


Put up on 10.09.2020.

Signed scanned copy of this order is being sent through whatsapp to Ahlmad of this Court with further direction to send the same to concerned official of District Court, RADC for uploading on



official website of Delhi District Court.

The signed hard copy of the order shall be placed on record as and when the regular functioning of the Courts at Rouse Avenue Complex, New Delhi is resumed.



(Arvind Kumar)
Special. Judge CBI-10
Rouse Avenue Courts
New Delhi/20.08.2020

CC No. : 01/2013
RC No. : AC1 2011 A0004
Branch : CBI/AC-I/New Delhi
U/S : 120B, 420, 471 IPC &
13(2) r/w 13(1) (d) of P C Act, 1988
CBI Vs. V.K. Verma & Ors.

20.08.2020

Matter is taken up today and the proceedings are conducted through Video Conferencing (CISCO WEBEX) as per directions of Hon'ble High Court issued vide Circular No.322/RG/DHC/2020 dated 15.08.2020 in view of the pandemic Covid-19

Present: Sh. Naveen Giri, Ld. PP for CBI.
Accused no. 1 V.K. Verma in person.
Accused no. 2. M. Jeychandren in person.
Sh. Rajesh Anand, Ld. Counsel for accused no. 2.
Accused no. 3 Ram Mohan in person.
Sh. Yogesh Chhabra, Ld. Counsel for accused no. 3.
Accused no. 4 Surjit Lal in person.
Sh. Rajesh Anand, Ld. Counsel for accused no. 4.
Accused no. 5 KUK Reddy is present.
Sh. Satya Narayan, Ld. Counsel for accused no. 5.
Accused no 6, Sangeeta Weinkar is present.
Ms. Smriti Sinha, Ld. Counsel for accused no. 6.
None for accused no. 7, Suresh Kumar.
None for accused no. 8 and 9.

Put up on 27.10.2020.

Signed copy of this order is being sent through whatsapp to Ahlmad of this Court with direction to send the same to concerned official of District Court, RADC for uploading on official website of Delhi District Court.



The signed hard copy of the order shall be placed on record as and when the regular functioning of the Courts at Rouse Avenue Complex, New Delhi is resumed.



(Arvind Kumar)
Special Judge (PC Act), CBI-10
Rouse Avenue Court
New Delhi/20.08.2020